IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.1/2004

1. Smt. Lata Vinayak Bhatkuly,
2. Shri Vinayak G. Bhatkuly,
both major, married, residing
at Verna, Bardez, Goa. .... Appellants.

V/s.

1. Mrs. Sunita Hari Prabhu,
2. Shri Hari Bhikaji Prabhu,
both major, married, service,
residents of H.No.755, Near
Flower Pot Restaurant,
Porvorim, Bardez, Goa.

3. Shri Prabhakar Shripad Dhond,
4. Smt. Pratibha Prabhakar Dhond,
both amjor, married, residents of
H.No.755, Near Flower Pot
Restaurant, Porvorim, Bardez, Goa.

5. Smt. Sudha Chandrakant Patkar,
6. Shri Chandrakant D. Patkar,
both major, married, residing at
near Old Chowgule College,
Gogol, Margao, Goa.

7. Smt. Sulochana Surendra
Dhond,

7 a. Miss Gauri Surendra Dhond,
7 b. Miss Manchali Surendra Dhond,
7 c. Miss Trupti Surendra Dhond,
7 d. Mist. Sripad Surendra Dhond,
through their legal guardian
Smt. Sulochana Surendra Dhond,
all residents of House No.318,
Mala, Panaji, Goa.
8. Smt. Sheetala Purushottam Pai,
9. Shri Purushottam Pai,
both major, married, residing at
Corlim, Old Goa. .... Respondents.

(respondents No.3 to 9 deleted
by order dated 9.1.2004.)

Mr. V.A. Lawande, Advocate for the appellants.

Mr. V.R. Tamba, Advocate for respondents No.1 and 2.

CORAM : N.N. MHATRE, J.

DATE : JANUARY 09, 2004.

ORAL JUDGMENT :

Learned Counsel for the appellants seeks leave to delete respondents No.3 to 9. Leave granted.

2. This appeal from order has been filed challenging removal of the appellant No.1 as an administrator in the Inventory Proceedings No.26/94 and Inventory Proceedings No.222/96/A. It appears that the appellant No.1 who was appointed as an administrator was absent on 24.9.2003, the reason for her absence was ill-health. Her Advocate also did not remain present on 24.9.2003, on which date she was supposed to offer herself for cross examination. On this date the learned Judge removed her from the office of administrator in terms of Article 1439(1) of the Portuguese Civil Code on the ground of failure to remain present during the course of the proceedings. Respondent No.1 was appointed in place of appellant No.1 as administrator in terms of Article 2068 of the Portuguese Civil Code. It is this order which is challenged in this appeal from order.

3. After hearing the Advocates and on perusal of the Articles of the Portuguese Civil Code, I find

that the learned trial Judge has erred in his approach. Article 1439 (1) deals with removal of the administrator. The conditions and reasons for which the administrator may be removed are mentioned in Article 1439(1). However, this removal has to be applied for by any party. But the administrator is then required to be notified to give his say within a period of three days and in the subsequent five days, after the examination of the witnesses which have been indicated in the application or the reply, not in excess of three for each party, the decision is to be given. This procedure has not been followed by the learned trial Judge prior to removal of the administrator. This procedure has to be followed before such removal. Hence the order passed on 24.9.2003, is erroneous and is required to be set aside. The appellant No.1 is accordingly reinstated as an administrator. The respondent No.1 who was appointed as administrator pursuant to the impugned order, has given statement on oath on 5.11.2003. This statement need not be considered while disposing of the inventory proceedings.

NISHITA MHATRE, J.

ssm.